

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ROY ANTHONY HUIZAR

V.

SHERIFF BOB HEWES

§
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§
§
§

C.A. NO. C-05-575

MEMORANDUM AND RECOMMENDATION TO DISMISS

Texas state prisoner Roy Anthony Huizar filed this action pursuant to 42 U.S.C. § 1983. (D.E. 1, 7). Petitioner also filed a motion to proceed in forma pauperis. (D.E. 10).

DISCUSSION

Petitioner is currently incarcerated in the Wynne Unit in Huntsville, Texas. He is a litigant who has accumulated in excess of three strikes under 28 U.S.C. § 1915(g), and is therefore, barred from proceeding in forma pauperis in any civil action or appeal filed while he is in prison unless he shows that he is under imminent danger of serious physical injury.¹ He makes no such assertion or

¹ Huizar v. Director, et al., No. 6:96-cv-795 (E.D. Tex. Feb. 26, 1996) (first strike); Huizar v. Goldermier, et al., No. 3:99-cv-2006 (N.D. Tex. Sept. 30, 1999) (second strike); Huizar v. Collins, et al., No. 2:99-cv-280 (S.D. Tex. Aug. 16, 1999) (third strike); Huizar v. Hew, et al., No. 2:99-cv-282 (S.D. Tex. Aug. 16, 1999) (fourth strike); Huizar v. Bob, et al., No. 2:99-cv-287 (S.D. Tex. Aug. 16, 1999) (fifth strike); Huizar v. Collins, et al., No. 4:99-cv-2929 (S.D. Tex. Oct. 20, 1999) (six strike); Huizar v. Sheriff, No. 3:99-cv-2007 (N.D. Tex. Nov. 10, 1999) (barred for three strikes); Huizar v. Bowles, No. 3:99-cv-2005 (N.D. Tex. Nov. 22, 1999) (barred for three strikes).

showing in his current petition. See Banos v. O'Guin, 144 F.3d 883, 885 (5th Cir. 1998) (per curiam). Indeed, his claim relates to an incident that took place either on October 16, 1990 or October 16, 1991. (D.E. 1, at 1, 2).

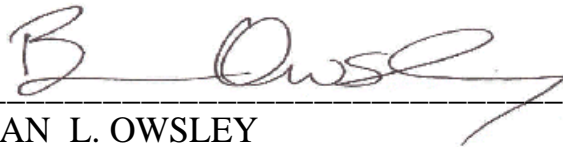
The Fifth Circuit has held that an inmate who has three or more strikes pursuant to § 1915(g) may not proceed in forma pauperis in any new civil actions. Adepegba v. Hammons, 103 F.3d 383, 388 (5th Cir. 1996). Plaintiff has more than three strikes for frivolous actions. Therefore, it is respectfully recommended that this action should be dismissed and that his application to proceed in forma pauperis be denied.

RECOMMENDATION

Plaintiff has over three strikes pursuant to § 1915(g). Accordingly, it is respectfully recommended that his action be dismissed. It is also respectfully recommended that his motion to proceed in forma pauperis, (D.E. 10), be denied.

Finally, it is respectfully recommended that, should the Court adopt this recommendation, the dismissal be characterized as one described by 28 U.S.C. § 1915(g), and that the Clerk be directed to provide a copy of the order of dismissal to: **District Clerk for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler Texas, 75702, Attention: Betty Parker.**

Respectfully submitted this 6th day of January 2006.

A handwritten signature in dark ink, appearing to read "B. Owsley", is written over a horizontal line.

BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(C); Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 2001-6, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).